

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported):

**August 2, 2019**

**Arbor Realty Trust, Inc.**

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

**MARYLAND**

(STATE OF INCORPORATION)

**001-32136**

(COMMISSION FILE NUMBER)

**20-0057959**

(IRS EMPLOYER ID. NUMBER)

**333 Earle Ovington Boulevard, Suite 900**

**Uniondale, New York**

(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

**11553**

(ZIP CODE)

**(516) 506-4200**

(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.01 per share	ABR	New York Stock Exchange
Preferred Stock, 8.25% Series A Cumulative Redeemable, par value \$0.01 per share	ABR-PA	New York Stock Exchange
Preferred Stock, 7.75% Series B Cumulative Redeemable, par value \$0.01 per share	ABR-PB	New York Stock Exchange
Preferred Stock, 8.50% Series C Cumulative Redeemable, par value \$0.01 per share	ABR-PC	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 1.01 Entry into a Material Definitive Agreement**

On August 2, 2019, Arbor Realty Trust, Inc. (the “Company”) and Arbor Realty Limited Partnership (the “OP”) entered into Amendment No. 2 (the “Amendment”), to the Equity Distribution Agreement, dated February 13, 2014, among the Company, the OP and JMP Securities LLC, as sales agent, as amended on August 10, 2016. In accordance with the terms of the Amendment, the Company may offer and sell up to 7,500,000 shares of its common stock, par value \$0.01 per share (the “Shares”) from time to time in “at-the-market” offerings under the Company’s registration statement on [Form S-3 \(File No. 333-225602\)](#), as filed with the Securities and Exchange Commission on June 13, 2018, and all amendments related thereto (the “Registration Statement”).

A copy of the Amendment is filed as Exhibit 1.1 hereto and is incorporated herein by reference. The legal opinion of Venable LLP relating to the legality of the Shares is attached as Exhibit 5.1 to this Current Report on Form 8-K.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit Number</u>	<u>Exhibit</u>
1.1	<a href="#">Amendment No. 2, dated August 2, 2019, to the Equity Distribution Agreement, dated February 13, 2014, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership and JMP Securities LLC, as sales agent, as amended</a>
5.1	<a href="#">Opinion of Venable LLP</a>
23.1	<a href="#">Consent of Venable LLP (included in Exhibit 5.1)</a>

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ARBOR REALTY TRUST, INC.

By: /s/ Paul Elenio  
Name: Paul Elenio  
Title: Chief Financial Officer

Date: August 2, 2019

ARBOR REALTY TRUST, INC.  
AMENDMENT NO. 2 TO  
EQUITY DISTRIBUTION AGREEMENT

August 2, 2019

JMP Securities LLC  
600 Montgomery Street, Suite 1100  
San Francisco, California 94111

Ladies and Gentlemen:

Reference is made to the Equity Distribution Agreement, dated February 13, 2014 (the “EDA”), between JMP Securities LLC (“JMP”) and Arbor Realty Trust, Inc., a Maryland corporation (the “Company”) and Arbor Realty Limited Partnership, a Delaware limited partnership (the “Operating Partnership”), as amended by Amendment No.1 to the Equity Distribution Agreement, dated August 10, 2016, between JMP, the Company and the Operating Partnership (together with the EDA, the “Agreement”), pursuant to which the Company agreed to sell through JMP as placement agent, up to 7,500,000 shares of common stock, par value \$0.01 per share, of the Company. All capitalized terms used in this Amendment No. 2 (this “Amendment”) to the Agreement between JMP, the Company and the Operating Partnership and not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. JMP, the Company and the Operating Partnership agree as follows:

A. Amendments to Agreement. The Agreement is amended as follows:

1. The first sentence of the first paragraph of Section 1 of the Agreement is hereby deleted and replaced with the following:

“The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through the Placement Agent, acting as agent and/or principal, up to 7,500,000 shares (the “Securities”) of the Company’s common stock, par value \$0.01 per share (the “Common Stock”). Such amount of Securities available for offer and sale are in addition to any offers and sales of Securities made prior to the date hereof under the Prospectus Supplement filed by the Company and effective on August 10, 2016.”

2. The first sentence of the second paragraph of Section 1 of the Agreement is hereby deleted and replaced with the following:

“The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the “Securities Act”), with the Commission a registration statement on Form S-3 (File No. 333-225602), including a base prospectus, relating to certain securities, including the Securities to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the “Exchange Act”).”

3. The fourth sentence of the second paragraph of Section 1 of the Agreement is hereby deleted and replaced with the following:

“Except where the context otherwise requires, “Registration Statement,” as used herein, means the registration statement, as amended at the time of such registration statement’s effectiveness for purposes of Section 11 of the Act, as such section applies to the Placement Agent, and any subsequent registration statement filed by the Company to replace such Registration Statement upon its expiration pursuant to Rule 415(a)(5) and (6) under the Act, including (1) all documents filed as a part thereof or incorporated or deemed to be incorporated by reference therein and (2) any information contained or incorporated by

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reference in a prospectus filed with the Commission pursuant to Rule 424(b) under the Act, to the extent such information is deemed, pursuant to Rule 430B or Rule 430C under the Act, to be part of the registration statement at the effective time.”

4. Section 5(a)(6) of the Agreement is hereby deleted.

5. The first sentence of Section 5(a)(12) of the Agreement is hereby deleted and replaced with the following:

“The Third Amended and Restated Agreement of Limited Partnership of the Operating Partnership (the “Partnership Agreement”, dated July 14, 2016, by and among Arbor Realty GPOP, Inc., a Delaware corporation, Arbor Realty LPOP, Inc. a Delaware corporation, Arbor Commercial Mortgage, LLC and the Company has been duly and validly authorized, executed and delivered by the Company (through its direct subsidiaries) and is a valid and binding agreement, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization or other laws affecting enforcement of creditors’ rights or by general equitable principles.”

6. The first sentence of Section 5(a)(14) of the Agreement is hereby deleted and replaced with the following:

“The authorized, issued and outstanding stock of the Company is as set forth in the Company’s quarterly report on Form 10-Q for the three months ended March 31, 2019.”

7. Section 5(a)(40) of the Agreement is hereby amended by deleting the words “December 31, 2014” in the penultimate sentence and replacing them with the words “December 31, 2019.”

8. The proviso in the second sentence of Section 7(o) of the Agreement is hereby deleted.

9. Schedule I of the Agreement is hereby deleted and replaced with the following:

<u>Name</u>	<u>Jurisdiction of Organization</u>	<u>Type of Entity</u>
Arbor Realty GPOP, Inc.	Delaware	Corporation
Arbor Realty Limited Partnership	Delaware	Limited Partnership (general partner is Arbor Realty GPOP, Inc.)
Arbor Realty SR, Inc.	Maryland	Corporation
Arbor Realty Commercial Real Estate Notes 2017- FL1, Ltd.	Cayman Islands	Exempted Company with Limited Liability
Arbor Realty Commercial Real Estate Notes 2017- FL2, Ltd.	Cayman Islands	Exempted Company with Limited Liability
Arbor Realty Commercial Real Estate Notes 2017- FL3, Ltd.	Cayman Islands	Exempted Company with Limited Liability
Arbor Realty Commercial Real Estate Notes 2018- FL1, Ltd.	Cayman Islands	Exempted Company with Limited Liability
Arbor Realty Commercial Real Estate Notes 2019- FL1, Ltd.	Cayman Islands	Exempted Company with Limited Liability
ARSR Alpine LLC	Delaware	Corporation

10. Schedule II of the Agreement is hereby deleted and replaced with the following:

<u>Name</u>	<u>Percentage of Ownership</u>	<u>Jurisdiction of Organization</u>	<u>Type of Entity</u>
ABT ESI, LLC	23.75%	Delaware	Limited Liability Company
420 Fifth Associates, LLC	80.00%	Delaware	Limited Liability Company
Legacy Equity Investment Group LLC	51.33%	Delaware	Limited Liability Company
Arbor Realty Holdings LLC	100.00%	Delaware	Limited Liability Company
PE 25 LLC	42.00%	Delaware	Limited Liability Company

Lexford Pools 1/3 LLC	49.00%	Delaware	Limited Liability Company
AR Prime	66.67%	Delaware	Limited Liability Company
JT Prime	50.00%	Delaware	Limited Liability Company
WSC Investors, LLC	49.74%	Delaware	Limited Liability Company
Empirian at Inverness, LLC	0.10%	Delaware	Limited Liability Company
Empirian Highlands, LP	0.10%	Tennessee	Limited Partnership
Empirian Wildewood LLC	0.10%	Georgia	Limited Liability Company
Empirian at Park Row LLLP	1.00%	Delaware	Limited Liability Limited Partnership
East River Portfolio Holdings LLC	5.00%	Delaware	Limited Liability Company
Arbor 1277 PE LLC	50.00%	Delaware	Limited Liability Company
Southern JV LLC	0.10%	Delaware	Limited Liability Company

11. The first sentence of the Form of Placement Notice attached as Exhibit A is amended to add the words “as amended on August 10, 2016 and August 2, 2019.”

12. The third sentence of the form of Officer Certificate attached as Exhibit G is amended to add the words “and August 2, 2019” immediately after “, as amended on August 10, 2016.”

- B. Prospectus Supplement. The Company shall file a 424(b) Prospectus Supplement reflecting this Amendment within two Business Days of the date hereof.
- C. No Other Amendments. Except as set forth in Part A above, all the terms and provisions of the Sales Agreement shall continue in full force and effect.
- D. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Amendment by one party to the other may be made by facsimile or email transmission.
- E. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws.

**[Remainder of page intentionally left blank.]**

If the foregoing correctly sets forth the understanding between us, please so indicate in the space provided below for that purpose.

Very truly yours,

**ARBOR REALTY TRUST, INC.**

By: /s/ Paul Elenio

Name: Paul Elenio

Title: Chief Financial Officer

**ARBOR REALTY LIMITED PARTNERSHIP**

By: Arbor Realty GPOP, Inc., its General Partner

By: /s/ Paul Elenio

Name: Paul Elenio

Title: Chief Financial Officer

ACCEPTED as of the date first above written:

**JMP SECURITIES LLC**

By: /s/ Carter Mack

Name: Carter Mack

Title: Chairman, Investment Banking Management Committee

## [LETTERHEAD OF VENABLE LLP]

August 2, 2019

Arbor Realty Trust, Inc.  
333 Earle Ovington Boulevard, Suite 900  
Uniondale, New York 11553

Re: Registration Statement on Form S-3 (File No. 333-225602)

Ladies and Gentlemen:

We have served as Maryland counsel to Arbor Realty Trust, Inc., a Maryland corporation (the “Company”), in connection with certain matters of Maryland law arising out of the sale and issuance of up to 7,500,000 shares (the “Shares”) of common stock, \$0.01 par value per share (the “Common Stock”), of the Company, covered by the above-referenced Registration Statement, and all amendments related thereto (the “Registration Statement”), filed by the Company with the U.S. Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “1933 Act”). The Shares are to be issued from time to time in at-the-market offerings pursuant to the Equity Distribution Agreement, dated as of February 13, 2014, by and between the Company, Arbor Realty Limited Partnership (the “OP”) and JMP Securities LLC (“JMP”), as amended by that certain Amendment No. 1 to Equity Distribution Agreement, dated as of August 10, 2016, by and between the Company, the OP and JMP, and Amendment No. 2 to Equity Distribution Agreement, dated as of August 2, 2019 (as amended, the “ED Agreement”), by and between the Company, the OP and JMP.

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (hereinafter collectively referred to as the “Documents”):

1. The Registration Statement, in the form transmitted to the Commission under the 1933 Act;
  2. The Company’s Prospectus, dated June 25, 2018, as supplemented by the Company’s Prospectus Supplement, dated as of the date hereof, each in the form in which it was filed with the Commission pursuant to Rule 424(b) promulgated under the 1933 Act;
  3. The charter of the Company (the “Charter”), certified by the State Department of Assessments and Taxation of Maryland (the “SDAT”);
  4. The Amended and Restated Bylaws of the Company, certified as of the date hereof by an officer of the Company;
  5. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;
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6. Resolutions adopted by the Board of Directors of the Company (the "Resolutions"), authorizing the registration, sale and issuance of the Shares, certified as of the date hereof by an officer of the Company;

7. The ED Agreement;

8. A certificate executed by an officer of the Company, dated as of the date hereof; and

9. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.

2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.

3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party's obligations set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.

4. All Documents submitted to us as originals are authentic. The form and content of all Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.

5. The Shares will not be issued or transferred in violation of the restrictions on transfer and ownership of shares of stock of the Company set forth in Article VII of the Charter.

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6. Upon the issuance of any Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under the Charter.

7. The number of Shares, and the offering price of each Share, to be issued by the Company from time to time pursuant to the ED Agreement will be determined by the Authorized Officers in accordance with the Resolutions and the ED Agreement (with such determinations referred to hereinafter as the "Officer Instructions") prior to the issuance thereof.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Company is a corporation duly incorporated and existing under the laws of the State of Maryland and is in good standing with the SDAT.

2. The issuance of the Shares has been duly authorized and, when and if issued and delivered against payment therefor in accordance with the Officer Instructions, the Resolutions, the ED Agreement and the Registration Statement, the Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the laws of the State of Maryland and we do not express any opinion herein concerning federal law or any other state law. We express no opinion as to the applicability or effect of federal or state securities laws, including the securities laws of the State of Maryland, or as to federal or state laws regarding fraudulent transfers. To the extent that any matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Maryland, we do not express any opinion on such matter. The opinion expressed herein is subject to the effect of any judicial decision which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the Offering (the "Current Report"). We hereby consent to the filing of this opinion as an exhibit to the Current Report and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act.

Very truly yours,

/s/ Venable LLP

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